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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,520	03/26/2004	Christopher Vincent Decker	20,108B	1191

23556 7590 10/20/2006

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EXAMINER
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WAGGONER, TIMOTHY R

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/810,520	DECKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Timothy R. Waggoner	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 08/30/2006 have been fully considered but they are not persuasive.

Applicants arguments filed with respect to claims 1-6,7,9-12,14,15 and 21-23 have been fully considered but they are not persuasive. Applicant argues that the hinged members disclosed by Julius does not disclose the that second hinge is not located along a second longitudinal edge. However, Julius does disclose a second hinge formed beside and parallel to the edge which fits the definition of the word along i.e. (through, on, beside, over, or parallel to the length or direction of). For the foregoing reason claims 1,4,6 and 7 stand rejected.

Applicants arguments filed with respect to claims 2,3 and 9-11 and 21-23 have been fully considered but they are not persuasive. Applicant argues that the forming of the dispenser as one piece as disclosed by Julius as modified by Margulies does not disclose the formation as suggested by applicant. However, Julius teaches a dispenser comprised by three members, a body portion formed together with a first cover member and a third cover member snapped on to the first cover and the teaching of Margulies which teaches three components a first cover member and a second cover member and a collar ring which are all formed as a single piece. The teaching of Margulies are used to teach a structure composed of three components formed as a single piece and connected by living hinges. These teachings combined with the dispenser of Julius

anticipate the dispenser of applicant. For the foregoing reasons claims 2,3,9-11 and 21-23 stand rejected.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4,7,8 are rejected under 35 U.S.C. 102(b) as being anticipated by Julius USPN 5,542,567.

Julius discloses a dispenser comprising:

(Re claim 1) “a first member” (36 figure 10). “a second member pivotally connected to said first member ...said second member having a second entrance formed therein” (38 figure 10). “a third member secured to said second member by a first hinge located along said second longitudinal edge” (70 figure 10).

(Re claim 4) “rectangular configuration with longitudinal axis a transverse axis and a vertical axis” (figure 10).

(Re claim 7) “said third member can remain in a closed position covering the said second entrance when said first entrance is opened” (figure 12).

(Re claim 8) “said third member pivots away from said second member to open second entrance in a direction opposite to the direction that said second member pivots” (figure 10).

(Re claim 16) "a first member" (36 figure 10). "a second member pivotally connected to said first member ...said second member having a second entrance formed therein" (38 figure 10). "a third member secured to said second member by a second hinge located along said second edge ... cover second entrance" (70 figure 10). "maximum dimension which ranges from between about 70% to about 100% of the width of said folded sheet-like articles" ("expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim", MPEP 2115).

(Re claim 17) "second entrance has a maximum dimension which ranges from between about 75% and to about 95% of the width of said folded sheet like articles" ("expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim", MPEP 2115).

(Re claim 20) "said third member pivots away from said second member to open second entrance in a direction opposite to the direction that said second member pivots" (figure 10).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3,9-11 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julius USPN 5,542,567 in view of Margulies USPN 4,526,291.

(Re claim 2) Julius discloses the dispenser claimed in claim 1.

Julius does not disclose the three members being formed integrally.

Margulies teaches the forming of three members integrally.

It would be obvious to one skilled in the art to modify the construction method of Julius by using one part construction as taught by Margulies because it reduces assembly times.

(Re claim 3) "said single entity is formed by injection molding" (claim 5 Julius, claim 9 Margulies)

(Re claim 9) Julius discloses the dispenser as claimed in claim 8.

Julius does not disclose the third member being able to move 180 degrees.

Margulies teaches the movement of the third member having the ability to move 180 degrees.

It would be obvious to one skilled in the art to modify the movement of the third member of Julius to move 180 degrees as taught by Margulies because it allows for easier access.

(Re claim 10) Julius discloses a dispenser comprising:

"a first member" (36 figure 10). "a second member pivotally connected to said first member ...said second member having a second entrance formed therein" (38 figure 10). "a third member secured to said second member by a second hinge located along said second longitudinal edge." (70 figure 10).

Julius does not disclose the three members being formed integrally.

Margulies teaches the forming of three members integrally.

It would be obvious to one skilled in the art to modify the construction method of Julius by using one part construction as taught by Margulies because it reduces assembly times.

(Re claim 11) "second member has an upper surface and said third member has an upper surface ... flush" (figure 5 Julius).

(Re claim 21-23) Julius discloses the dispenser as claimed in claim 16.

Julius does not disclose the third member being able to rotate 180-270 degrees.

Margulies teaches a third member which is capable of rotating 180-270 degrees.

It would be obvious to one skilled in the art to modify the movement of the third member of Julius to be 180-270 degrees as taught by Margulies because it allows for easier access.

Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julius as modified by Margulies as applied to claims 2,3,9-11,13 and 21-23 above, and further in view of Bando EP 0968934 B1.

(Re claims 5 and 15) Julius as modified by Margulies discloses the dispenser claimed in claims 4 and 12.

Julius as modified by Margulies does not disclose an elliptical entrance whose major axis is aligned on the transverse axis of the container.

Bando teaches an elliptical entrance aligned as described.

It would be obvious to one skilled in the art to modify the entrance of Julius to be elliptical and aligned as stated because it is another art recognized entrance geometry.

(Re claim 15) "entrance has a maximum dimension which ranges from between about 70% to 100% of the width of said sheet" ("expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim", MPEP 2115).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Julius as modified by Margulies and further modified by Bando. With respect to claim 6, Julius as modified by Margulies and further modified by Bando does not disclose specific values for height. However, one of ordinary skill in the art is expected to routinely experiment with the parameters, especially when the specifics are not disclosed, so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been obvious through routine experimentation and optimization, for one of ordinary skill in the art to arrive at the height claimed.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Julius as modified by Margulies. With respect to claim 12, Julius as modified by Margulies does not disclose specific values for height. However, one of ordinary skill in the art is expected to routinely experiment with the parameters, especially when the specifics are not disclosed, so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been obvious through routine experimentation and optimization, for one of ordinary skill in the art to arrive at the height claimed.

Further Julius as modified by Margulies disclose a dispenser comprising:



“rectangular configuration with longitudinal axis a transverse axis and a vertical axis ... a first longitudinal edge spaced apart and oppositely aligned to a second longitudinal edge said first member being pivotally connected along said first longitudinal edge, and said third member capable of pivoting on said hinge which is located along said second longitudinal edge” (figure 10).

(Re claim 13) “said second member is pivotally connected to said first member along said first longitudinal edge and said third member is secured to said second member along said second longitudinal edge” (figure 10 Julius).

Claims 18 and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Julius as modified by Margulies and further modified by Bando. With respect to claims 18 and 19, Julius as modified by Margulies and further modified by Bando does not disclose specific values for surface area of the entrance. However, one of ordinary skill in the art is expected to routinely experiment with the parameters, especially when the specifics are not disclosed, so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been obvious through routine experimentation and optimization, for one of ordinary skill in the art to arrive at the surface area claimed.

(Re claim 18) Further Julius as modified by Margulies and further modified by Bando discloses a dispenser comprising

“second entrance has an elliptical configuration having a major axis aligned parallel to the transverse axis of said dispenser” (i.e. rejections of claims 5 and 15).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Julius as modified by Margulies as applied to claim 12 above, and further in view of Florian USPN 4,096,986.

Julius as modified by Margulies discloses the dispenser as claimed by claim 12.

Julius does not disclose finger tabs as claimed in claim 14.

Florian teaches a set of finger tabs with 2 tabs on the lower portion and one tab on the top portion which is located between the other two tabs.

It would be obvious to one skilled in the art to add finger tabs to the dispenser of Julius as taught by Florian because it makes the container easier to open.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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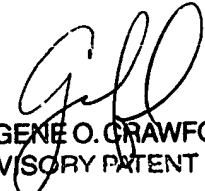
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy R. Waggoner whose telephone number is (571) 272-8204. The examiner can normally be reached on Mon-Thu 8am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TRW

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER